Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1975

No. 75-60

Willie B. Vincent and Florida Vincent,
Individually; and Willie B. Vincent
as Father and Next Friend of
Sharon Vincent, a Minor;
Vernon Smith and Bernice Smith, Individually;
and Vernon Smith as Father and Next Friend
of Christopher Smith, a Minor,

Petitioners

VS.

United States of America,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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PETITION FOR CERTIORARI

The petitioners, Willie B. Vincent and Florida Vincent, individually; and Willie B. Vincent as father and next friend of Sharon Vincent, a minor; Vernon Smith and

Bernice Smith, individually; and Vernon Smith as father and next friend of Christopher Smith, a minor, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit entered in this proceeding on April 14, 1975.

OPINIONS BELOW

The opinion of the Court of Appeals, reported at 513 F. 2d 1296 (8th Cir. 1975), is attached hereto as Appendix A.

The opinion of the District Court, reported at 383 F. Supp. 471 (E. D. Ark. 1974), is attached hereto as Appendix B.

JURISDICTION

The judgment for the Court of Appeals for the Eighth Circuit was entered on April 14, 1975. This petition for certiorari was filed within ninety days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254 (1).

QUESTION PRESENTED

Whether Arkansas Mid-Delta Office of Economic Opportunity, Inc. was a defacto agency or instrumentality of the United States government.

STATEMENT OF THE CASE

This is an action against the United States government under the Federal Tort Claims Act, 28 U.S.C.

§2671, et seq., which arose from an automobile collision on March 14, 1973. Christopher Smith and Sharon Vincent, pre-school children, were passengers in an automobile driven by Mrs. Mary L. Rush, an employee of Arkansas Mid-Delta Office of Economic Opportunity, Inc. (Mid-Delta OEO). While Mrs. Rush was transporting the children from a "Head Start" program to their homes, a head-on collision occurred and Sharon and Christopher received catastrophic brain damage and other injuries. Mid-Delta OEO is technically an Arkansas non-profit corporation, which receives federal grants for the purpose of providing assistance to the poor under the Economic Opportunity Act, 42 U.S.C. 2701 et seq. Mrs. Rush was a part-time driver for the Head Start pr ›gram of Mid-Delta OEO; her wages were paid from funds derived from grants and assistance of the federal government paid to Mid-Delta OEO under contract.

Invoking the jurisdiction of the district court under 28 U.S.C. §1346 (b), petitioners brought this action against the United States for personal injuries caused by a negligent act of an employee of the federal government. 28 U.S.C. §2671 provides, in part, that an "employee of the Government" is anyone "acting on behalf of a federal agency in an official capacity temporarily or permanently in the service of the United States, whether with or without compensation." This section also defines "federal agency" as including "corporations primarily acting as instrumentalities or agencies of the United States."

Petitioners do not contend that Mrs. Rush was a formal employee of the federal government, but that Mid-Delta OEO was a defacto agency or instrumentality of the federal government within the meaning of the Federal

Tort Claims Act, and Mrs. Rush was an employee of that federal agency.

The District Court dismissed the action, ruling that Mrs. Rush was not an employee of the United States, because Mid-Delta OEO was separate from the United States Office of Economic Opportunity and federal control over Mid-Delta OEO was not sufficient to render it a federal agency or instrumentality within the meaning of 28 U.S.C. §2671. Appendix B, *infra.*

The Eighth Circuit Court of Appeals affirmed the judgment of the District Court for the reasons set forth in the District Court opinion. Appendix A, *infra.*

This petition follows the decision rendered by the Eighth Circuit Court of Appeals.

REASONS FOR GRANTING THE WRIT

DECISIONS OF DIFFERENT CIRCUITS ARE IN DIRECT CONFLICT ON THE QUESTION OF WHETHER CORPORATIONS SIMILAR TO ARKANSAS MID-DELTA OFFICE OF ECONOMIC OPPORTUNITY, INC., ARE TO BE CONSIDERED AGENCIES OR INSTRUMENTALITIES OF THE UNITED STATES GOVERNMENT. THIS CONFLICT IS A MATTER OF PRIME IMPORTANCE IN THE INTERPRETATION AND ADMINISTRATION OF FEDERAL LAW UNDER THE FEDERAL TORT CLAIMS ACT.

Congress has supplied millions upon millions of dollars to the various community action agencies and projects. For example, in 1972, Congress provided $811,300,000 for

community action agencies (see 474 F. 2d 1052). In the summer of 1972 approximately 185,000 persons were employed in community action agency programs (attached as Appendix C is a letter from Community Services Administration [formally O.E.O.] to a research assistant for attorneys for plaintiffs). The Head Start program was one of many programs employed by O.E.O. (now Community Services Administration) to effect the congressionally mandated "war on poverty." Head Start is now technically under the auspices of the Department of Health Education and Welfare, but the programs and the legal principals involved are virtually the same. Appendices D and E are copies of statistical fact sheets for the fiscal year 1973 and 1974 for Head Start (these were provided to attorneys for plaintiffs by the Department of Health, Education and Welfare). These documents reflect that the Head Start budget for 1973 was 400.7 million and 403.9 million dollars for 1974. These fact sheets further reflect that 286,900 children were enrolled in Head Start in 1973 and 288,000 were enrolled in 1974. It is apparent, then, that the various community service agencies, Head-Start programs, and various other projects funded by Congress involve millions and millions of dollars and hundreds upon hundreds of thousands of employees and recipients (the poor of the nation).

Obviously, many other lawsuits will arise involving injuries to Head Start children by negligent employees. Undoubtedly other people involved in similar projects will be involved in such litigation. In the interest of justice the questions involved in these lawsuits should be removed. Litigants should not have to proceed under this shroud of doubt.

Three Circuit Courts of Appeals have now ruled on the issue of whether these community action organizations are, in fact, federal agencies or instrumentalities. The Fifth and Eighth Circuits are in clear conflict with the Sixth Circuit on the issue.

The Fifth Circuit, in two cases involving rights of employees of community agencies, has held that the employees were employees of a private corporation and not of the U.S. Government. *Robles v. El Paso Community Community Action Agency, Project Bravo, Inc.*, 456 F. 2d 189 (5th Cir. 1972), and *Hines v. Cenla Community Action Committee, Inc.*, 474 F. 2d 1052 (5th Cir. 1973) hold that the Office of Economic Opportunity does not sufficiently control the activities of these community action agencies funded under the Office of Economic Opportunity and the Department of Health, Education and Welfare so as to make them federal agencies within the meaning of 28 U.S.C. §2671.

On the other hand, the Sixth Circuit has ruled directly contrary to these cases in a case squarely in point with the case at bar. In *Orleans v. United States*, 509 F. 2d 197 (6th Cir. 1975), the Court ruled that a community action agency organized under the auspices of the Office of Economic Opportunity was, in fact, a federal agency for the purposes of the Federal Tort Claims Act. The Court determined that there was far too much control over these community action agencies for them to be considered merely independent contractors rather than defacto federal agencies. To designate these agencies "independent contractors" would be elevating "form above substance", and they should properly be considered federal instrumentalities.

In the instant case, the Eighth Circuit has ruled that Mid-Delta OEO is not a defacto federal instrumentality within the meaning of 28 U.S.C. §2671.

We submit that these four cases are indistinguishable as far as the issue of federal agency is concerned. Each case pivots on whether these community action agencies are purely private corporations acting as independent contractors or corporations "primarily acting as federal agencies or instrumentalities." Against this background, this Court can render a decision eliminating considerable confusion in the Federal Courts.

We submit that the instant case provides the Court with an opportunity to resolve this important question and remove the conflict between the circuits.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Eighth Circuit.

Respectfully submitted,

McMATH, LEATHERMAN & WOODS

And

WM. R. WILSON, JR., P.A.
711 West third Street
Little Rock, Arkansas 72201

Attorneys for Plaintiffs

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 74-1738

Willie B. Vincent and Florida Vincent, Individually; and Willie B. Vincent as Father and Next Friend of Sharon Vincent, a Minor; Vernon Smith and Bernice Smith, Individually; and Vernon Smith as Father and Next Friend of Christopher Smith, a Minor,	* *	
Appellants,		Appeal from the United States District Court for the Eastern District of Arkansas.
v.		
United States of America, Appellee.		

Submitted: February 10, 1975

Filed: April 14, 1975.

Before BRIGHT and STEPHENSON, Circuit Judges, and TALBOT SMITH, Senior District Judge.*

* TALBOT SMITH, Senior District Judge, Eastern District of Michigan, sitting by designation.

PER CURIAM.

Christopher Smith and Sharon Vincent, pre-school children, sustained severe bodily injuries in an automobile accident while riding with Mary L. Rush, who was transporting the children from a "Head Start" program to their homes. The children and their parents filed this suit pursuant to the Federal Tort Claims Act, 28 U.S.C. §2671 *et seq.*, alleging that Mrs. Rush negligently operated her automobile, thereby causing the accident.

The district court (Judge Oren Harris) ruled that Mrs. Rush was not an employee of the United States and dismissed the action. 1 Plaintiffs appeal from that dismissal.

The facts stand undisputed. Mrs. Rush's employer is Mid-Delta Office of Economic Opportunity, Inc., an Arkansas nonprofit corporation (Mid-Delta). Mid-Delta has obtained federal grants for the purpose of providing assistance to the poor under provisions of the Economic Opportunity Act, 42 U.S.C. §2701 *et seq.* Mid-Delta employed Mrs. Rush as a part-time driver for the Head Start program, paying her $1.60 per hour for four hours per day. She used her family automobile and received ten cents per mile travelled. The funds used for this purpose were largely derived from grants of assistance from the federal government paid to Mid-Delta under contract.

Appellants do not claim any formal employment between the federal government and Mrs. Rush but assert that Mid-Delta functioned as an agency or instrumentality of the United States within the meaning of the Federal Tort Claims Act.

1 *Vincent v. United States*, 383 F. Supp. 471 (E. D. Ark. 1974).

Under 28 U.S.C. §1346 (b), a suit may be brought against the United States for

> ***personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

28 U.S.C. §2671, as pertinent here, provides that an "employee of the Government" is anyone "acting on behalf of a federal agency in an official capacity temporarily or permanently in the service of the United States, whether with or without compensation." Section 2671 defines "federal agency" as including

> * * * the executive departments and independent establishment of the United States, and corporations primarily acting as, instrumentalities or agencies of the United States but does not include any contractor with the United States.

As the sole issue on appeal, we must determine whether Mid-Delta is an instrumentality or agency of the United States within the meaning of 28 U.S.C. §2671.

The district court carefully reviewed this question and concluded that (Mid-Delta was separate and distinct from the United States and the Office of Economic Opportunity and that federal control over Mid-Delta was insufficient to cause it to be considered an agency or instrumentality of the federal government within the meaning of the Federal Tort Claims Act.) Our review of the record, the district court opinion, and the relevant authorities convinces us that the district court was correct

in its ruling. *See Hines v. Cenla Community Action Committee, Inc.*, 474 F. 2d 1052, 1057-58 (5th Cir. 1973); *Robles v. El Paso Community Action Agency*, 456 F. 2d 189, 190-91 (5th Cir. 1972); *cf. D. R. Smalley & Sons, Inc. v. United States*, 372 F. 2d 505, 507-08 (Ct. Cl.), *cert. denied*, 389 U.S. 835 (1967); *United States v. Hainline*, 315 F. 2d 153, 155-56 (10th Cir.), *cert. denied*, 375 U.S. 895 (1963). A Sixth Circuit decision holds to the contrary. *Orleans v. United States*, 509 F. 2d 197 (6th Cir. 1975).

We affirm for the reasons set forth in Judge Harris' comprehensive and well-reasoned opinion.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT

APPENDIX B

Willie B. Vincent et al., Plaintiffs,

V.

United States of America,
Defendant.

No. H-73-C-54.

United States District Court,
E. D. Arkansas, E. D.
Sept. 11, 1974.

An action was brought against the United States under the Federal Tort Claims Act. The District Court, Oren Harris, J., held that a community action agency which was the recipient of assistance under the Economic Opportunity Act was not a "federal agency" within a statutory definition, and alleged negligence of a Head Start program driver employed by such community action agency did not give rise to liability of the United States under the Federal Tort Claims Act.

Government's motion for summary judgment granted and complaint dismissed.

McMath, Leatherman & Woods, and Wilson & Hodge, Little Rock, Ark., for plaintiffs.

W. H. Dillahunty, U. S. Atty., Little Rock, Ark., for defendant.

MEMORANDUM OPINION
AND ORDER

OREN HARRIS, District Judge.

The plaintiffs bring this action against the United States of America under the provisions of the Federal Tort Claims Act (28 U.S.C.A. §2671 et seq.) Jurisdiction is claimed under the provisions of 28 U.S.C.A. §1346 (b). Plaintiffs allege their claims have been presented to the appropriate Federal agency as required and the claims were rejected on November 9, 1973.

The plaintiffs are citizens and residents of Phillips County, Arkansas, and the cause of action upon which the case is based arose in that County.

It is alleged by the plaintiffs that, on or about March 14, 1973, Christopher Smith and Sharon Vincent, minors, were passengers in a car driven by Mary L. Rush, who, at that time, was an employee of the United States Government and she was acting within the course and scope of her employment at the time when the car driven by her collided head-on with a vehicle driven by Ruben Houston, resulting in serious injury to Christopher Smith and Sharon Vincent. Ruben Houston had driven his vehicle for a considerable period of time in the wrong or left lane of the road toward the on-coming vehicle of Mrs. Rush.

Further, the plaintiffs contend that Mrs. Rush was negligent in failing to keep a proper lookout and in failing to take reasonable avoiding action after she saw the on-coming vehicle driven by Ruben Houston. The plaintiffs claim that the negligence of Mrs. Rush was the proximate

cause of the collision and such negligence is imputed to the defendant.

The defendant, United States of America, filed a Motion to dismiss on the ground that the Complaint fails to state a cause of action against the defendant. The plaintiffs resist the Motion. Counsel for the Government and plaintiffs have filed briefs on behalf of the respective parties.

On examining the Motion, the plaintiffs' opposition, and the entire record, which includes depositions of witnesses and exhibits thereto filed in the case, the Court concludes that the only issue raised by the Motion is *whether or not Mary Rush was an employee of the United States at the time of the tragic automobile collision.*

[1] Since matters outside of the pleadings have been submitted by the defendant in support of the Motion and by the plaintiffs in opposition to the Motion, the Court, under the provisions of Rule 12 (b) of the Federal Rules of Civil Procedure, will treat the Motion as *one for summary judgment* under Rule 56 of the Federal Rules of Civil Procedure.

In 1964, the Congress of the United States provided for and adopted a policy to "eliminate the paradox of poverty in the midst of plenty in this Nation", by passing the Economic Opportunity Act. (42 U.S.C. §2701 et seq.) As stated by the Congress in its findings and declaration of purpose, "[I]t is highly desirable to employ the resources of the private sector of the economy of the United States in all such efforts to further the policy . . . " . Congress amended the Economic Opportunity Act in 1967.

In Subchapter II, the Congress provided for *urban and rural community action programs.* (42 U.S.C.A. §2781 et seq.) As provided by the Act, a community action agency shall be a state or political subdivision of a state (having elected or duly appointed governing officials), or a combination of such political subdivisions, or a public *or private non-profit agency* or organization which has been designated by a state or such a political subdivision or combination of such subdivisions with certain powers and authorities to carry out the provisions of the Act. (42 U.S.C.A. §2790)

A community may be a city, county, multi-city, or multi-county unit. Under Subsection (d), the Director may designate and provide financial assistance to a public or private non-profit agency as a community action agency in lieu of a community action agency designated under Subsection (a). (§2790)

Each community action agency, including a public or private non-profit agency, shall have a governing board consisting of a certain number of equal representation of (1) elected public officials, (2) members chosen in accordance with democratic selection procedures adequate to represent the poor in the area served, and (3) from business, industry, labor and other groups and interests in the community. The Congress required that the power and authority of the community action agency governing board shall include the power to appoint persons to senior staff positions, to determine major personnel, fiscal, and program policies, to approve overall program plans and priorities, and to assure compliance with conditions of, and approve proposals for financial assistance under the Act. (42 U.S.C.A. §2791)

In addition, the Congress provided that, in order to carry out the overall responsibility under the Act, a community action agency must have authority under its Charter or applicable law to receive and administer funds under the Act, funds and contributions from private or other local sources and funds under any Federal or State assistance program, and, therefore, be authorized to act as grantee, contractor, or sponsor of projects appropriate for inclusion in a community action program. (42 U.S.C.A. §2795)

Also, Congress provided for financial assistance to community action agencies and authorized appropriations for the purposes specified in the Act.

Phillips and Monroe Counties in Arkansas were considered to be and were designated as poverty areas within the meaning of the Economic Opportunity Act. An Arkansas corporation was organized as a *non-profit corporation* created under and by virtue of the laws of the State of Arkansas, §§64-1901 to 64-1921, Ark. Stats. 1947. The name of the corporation was Arkansas Mid-Delta Office of Economic Opportunity, Inc. It was established in and for the Mid-Delta area of Arkansas, with the intention of forming a non-profit corporation under the Economic Opportunity Act of 1964, as amended, in order to participate in the program and to receive grants and other assistance. Included in the authority under the Articles of Incorporation was the *power to devise plans and receive funds under contract from the Office of Economic Opportunity of the United States* and other public and private grants and assistance to aid the underprivileged and poor people of the area.

In addition to open membership by any citizen of the area, the Articles of Incorporation provided for a Board of Governors with authority to devise plans, programs, and assistance within the framework of the Economic Opportunity Act and to receive grants and assistance from other public and private sources.

The By Laws of the corporation established administrative procedures for the purpose of alleviating or eradicating poverty by mobilizing resources, public and private, in an attack on poverty.

The Arkansas Mid-Delta Office of Economic Opportunity, Inc., as a private non-profit community action agency, made application, pursuant to the authority of the Board of Governors, for grants of assistance pursuant to the Economic Opportunity Act as provided by Congress. In the meantime, Congress had authorized certain of these programs to be transferred to the Department of Health, Education and Welfare (H.E.W.). Application by the Mid-Delta corporation was made to H.E.W. for assistance in connection with a part of its community action plans.

Mrs. Mary Rush was employed, pursuant to the authority of the Board of Governors of Mid-Delta. She was employed as a part-time driver for the Head Start program. She was an hourly employee and was paid $1.60 per hour for four (4) hours per day. Her primary duties were to transport children from their homes to the Head Start Center. These children were generally underprivileged and of kindergarten age. She provided her own automobile to transport these children, for which she was paid ten cents ($0.10) per mile. She was engaged in this community action program as a driver to transport

children back and forth from their homes for approximately four (4) years. She used her husband's automobile for this purpose. Mrs. Rush was paid by Mid-Delta, *largely from grants of assistance from O.E.O. and H.E.W.*, pursuant to the application and contract between O.E.O. and Mid-Delta.

On the afternoon of March 14, 1973, about 2:30 or 3:00 o'clock, Mary Rush, in the course of her regular duties with Mid-Delta Corporation, was transporting the two minor plaintiffs, Christopher Smith and Sharon Vincent, along with ten other pre-school children, back to their homes from the Head Start Center. Her automobile was involved in a head-on collision with another vehicle driven by Ruben Houston. Sharon Vincent and Christopher Smith received serious injuries; one child was fatally injured and the others received some injury, as did Mary Rush. Mary Rush was in her lane of traffic when the head-on collision occurred.

It is undisputed that Mary Rush was an employee of Arkansas Mid-Delta Office of Economic Opportunity, Inc. and was acting in the scope of her employment at the time of the collision and resulting injuries.

[2] Plaintiffs do not contend that Mrs. Rush was a "formal" employee of O.E.O. or H.E.W. Plaintiffs insist that Arkansas Mid-Delta was, in fact, an agency or instrumentality of the United States Government within the meaning of the Federal Tort Claims Act.

Title 28, U.S.C.A. §1346 (b) provides that suits may be brought against the United States "for injury or loss of property . . . caused by the negligence or wrongful act or omission of any employee of the Government while acting

within the scope of their office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred'.

Title 28, U.S.C.A. §2671, defines Federal Agency as:

> " 'Federal Agency' includes the executive departments and independent establishments of the United States, and corporations primarily acting as, instrumentalities or agencies of the United States but does not include any *contractor* with the United States". (Emphasis Supplied)

Said Section 2671 defines employees of the Government as:

> " 'Employees of the Government' includes officers or employees of any federal agency, members of the military or naval forces of the United States, and *persons acting on behalf of a federal agency in an official capacity, temporarily or permanently* in the service of the United States, whether with or without compensation".

In applying these definitions to the issue here involved, the threshold question is *whether Mid-Delta is an instrumentality or agency of the United States.*

Counsel for the plaintiffs insist that the immediate employer (Mid-Delta Office of Economic Opportunity, Inc.) of the negligent party is a de facto Federal agency in that it was acting primarily as an agent or instrumentality of the United States Government. Counsel relies on the case of *Toth v. United States*, 107 F. Supp. 37 (N.D. Ohio 1952).

The Court cannot agree with this view. The Court is constrained to conclude that this record does not support the contention that Mid-Delta was acting primarily as an agent or instrumentality of the United States. *Toth v. United States, supra, is inapposite.* There, the Public Housing Administration of the United States was a Federal agency authorized by the Congress of the United States. The Court concluded that the lease to the Youngstown Metropolitan Housing Authority was not, in fact, a lease. *All profits were reserved to the Government. There was detailed supervision of the operation and management of the project by the Government and an approved operating budget.* The use of the property was restricted; the Government controlled all fiscal affairs; funds were carefully circumscribed; the Government determined the use of the property and title to all personal property was vested in the Government. There, the Court concluded, the local housing authority was acting as in instrumentality of the United States to achieve the purpose of the Government in the management and use of the housing project. *Toth v. United States, supra,* at page 38.

An identical question to the instant case was decided by the District Court, Stuart, J., for the Southern District of Iowa, within this Circuit, in an unpublished decision in the case of *Hughes v. United States,* 383 F. Supp. 1071, 1973. There, the Court said, inter alia:

> "The community action agencies are grantees of federal assistance, and are not created by the federal government.
>
> ********

> Individual employees are hired by the local community action agency under broad guidelines laid out by the O.E.O. See 'Community Action Memo 23-A, dated August 26, 1966; Part A.' The wages are to be set by the local agency, except that no one may be paid less than the federal minimum wage, and salaries over $5,000 per annum must be approved by O.E.O., if the salary is an increase of 20% or $2500 over prior wages. Vacations, sick leave, health care benefits, moving expenses, etc., are at the discretion of the local agency."

The Court went on to say that the employee there involved "cannot be considered an employee of the United States and that Iowa East Central T.R.A.I.N. is an entity separate and distinct from the United States government and the O.E.O."

Further, the Court concluded that federal control of TRAIN (under the O.E.O. Act) does not cause TRAIN to be primarily an instrumentality of the federal government within the meaning of the Federal Tort Claims Act, 28 U.S.C.A. §2671.

The Court concludes in the instant case that this is the correct construction of the Act as disclosed by the entire record in the case. See *Anderson v. Simpson,* (E.D. Tenn. 1972), unpublished, Docket CA 62-18 and 63-58; *Junior E. Baisden v. United States of America,* Civil Action 69-64, (S.D. Ohio 1970); Cf. *Robles v. El Paso Community Action Agency, Project Bravo, Inc., et al.,* 456 F. 2d 189, 190-91 (5 C.A. 1972).

Furthermore, the record discloses that Mary Rush, as an employee of Mid-Delta O.E.O., Inc., an Arkansas corporation, filed a claim with the Arkansas Workmen's

Compenation Commission which was considered and acted upon by t. e Commission, which granted benefits to her for her injury, and which she received. As pointed out by counsel for the Government, if Mary L. Rush had, in fact, been a Federal employee, she would have been covered and entitled to benefits under the provisions of the Federal Employee Compensation Act. See *Waters v. United States*, 328 F. Supp. 812 (E.D. Ark. 1971).

Accordingly, the Motion of the United States of America, treated as a Motion for summary judgment, will be granted.

APPENDIX C

Community Services Administration

WASHINGTON, D.C. 20506

June 26, 1975

Ms. Shawna Brown
1701 N. Bryant Street
No. 31
Little Rock, Arkansas 72207

Dear Ms. Brown:

Thank you for your inquiry regarding the Community Action Program.

We do not have exact figures on the total number of Community Action Agencies for each of the past six years. However, the number has varied only slightly, ranging from a high of 902 to a low of 870. There are two reasons for this fluctuation. In some places, adjacent areas have elected to merge their programs. Thus, where we once had two or more grantees, we now have one. In other places, such as North Dakota, all the CAAs decided to form one statewide program. Here again, the number of grantees is reduced. As you can see, though, the territory covered and the number of people served have remained the same. To put it another way, roughly two thirds of the nation's 3,141 counties have always been involved in some Community Action Program. These counties contain about 90 percent of the country's low-income population.

I regret that our information on the number of people employed by Community Action Agencies is less exact. In the summer of 1972, a survey indicated that approximately 185,000 persons were employed in these programs. Since the total number of CAAs has not changed appreciably since that time, it can be assumed that that employment figure has also remained about the same.

I hope this information will meet your needs. If we can be of further assistance, please contact us.

Sincerely,

William Sawyer
Associate Director
Public Affairs

APPENDIX D

U. S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Office of the Secretary
Office of Human Development
Office of Child Development
Washington, D. C. 20201

PROJECT HEAD START STATISTICAL FACT SHEET
FISCAL YEAR 1973

HEAD START BUDGET - $400.7 million

Head Start Full-Year Programs)	
Head Start Summer Programs)	$357.7 million
Parent and Child Centers	6.3 million
Evaluation	3.0 million
Career Development and Technical Assistance	19.1 million
Experimental Programs	6.0 million
Program Direction	8.6 million

Head Start Programs

Total number of Programs, including Parent and Child Centers	1973 - 1,545
Total number of Full-Year and Summer children, including children in Home Start, Child and Family Resources Program and Handicapped Programs	1973 - 379,000
Total number of Full-Year and Summer children enrolled since inception of Project Head Start	1973 - 4,941,500

Head Start Full-Year Programs

Total number of Programs	
50 States (including 76 Indian and Migrant programs)	1,296
Puerto Rico	12
Virgin Islands	4
Pacific Islands Trust Territories	6
Total number of children enrolled	286,900
Total number of personnel:	
Professional	21,286
Nonprofessional	35,433
Volunteers	85,000
Average cost per child	$1,180.00
Location of sites	
Urban - 60 percent	
Rural - 40 percent	

Head Start Summer Programs (summer session in 1973)

Total number of Programs	216
Total number of children enrolled	69,000
Total number of personnel:	
Professional	5,152
Nonprofessional	8,604
Volunteers	12,500
Average cost per child	$226.00
Federal contribution	80 percent
Local contribution	20 percent
Aggregate number of hours per child	120

Experimental Programs

Total number of Programs	74
Total number of children enrolled	14,800
Total number of personnel:	
Professional	264
Nonprofessional	342
Volunteers	636

Parent and Child Centers

Total number of Programs	33
Total number of children enrolled	8,300 (3,341 are ages 0-3; 4,959 are siblings)
Total number of families served	4,751
Federal contribution	80 percent
Local contribution	20 percent

PROJECT HEAD START

CHILDREN ENROLLED
(Summer and Full-Year)

FISCAL YEAR		FEDERAL HEAD START BUDGET
1965	561,000	$ 96.4 (Summer programs only)
1966	733,000	198.9
1967	681,400	349.2
1968	693,900	316.2
1969	663,600	333.9
1970	434,800	325.7
1971	415,800	360.0

1972	379,000	376.3
1973	379,000	400.7
1974	379,000	400.7

ESSENTIAL PRECEPTS

Head Start is a new and comprehensive national program, drawing together the disciplines, the knowledge and the resources of a variety of related fields. It is an attempt to meet the total needs of the child from a low-income family--emotional, intellectual, medical, nutritional, and societal. Head Start is not a kindergarten, nor a substitute for it.

HOW HEAD START OPERATES

The program, administered regionally, operates through a network of regional directors, community representatives, regional training officers in each State and Territory, State technical assistance offices, 800 consultant-experts in the various disciplines, and 800 consultants who are members of the American Academy of Pediatrics.

The staff in Washington directs the following activities: Field operations, evaluation, career development, general training and technical assistance, health, nutrition, volunteers, medical and dental and psychological services, social services, education, parent programs, summer orientation, day care, follow through liaison, and parent and child centers for children under 3 years of age and their families.

ACCOMPLISHMENTS

1. Total number of children served to date 4,941,500.

2. More than 10,000 low-income employees of full-year Head Start programs are now enrolled in college-level training for 2 year and 4 year degrees at approximately 400 colleges and universities in 49 states, Puerto Rico and the Virgin Islands.

3. Head Start has inspired the Nation to focus its attention on preschool education, not only for the deprived child but for all children.

4. Head Start has had a dramatic impact on the educational profession and system (the materials, the facilities, and the philosophy).

5. Head Start's policy of a small teacher-pupil ratio is now being followed by many of the Nation's public school kindergartens. The use of nonprofessional teacher aides is increasingly accepted by school systems as are social welfare aides by health and welfare agencies.

6. Head Start has provided a system through its training and demonstration efforts for developing new materials, teaching methods, and concepts for children of kindergarten age and for filtering this knowledge into the educational system. The impact is felt in institutions of higher learning which are involved in Head Start training programs.

7. Better records are now being kept on the child as he progresses from kindergarten through the primary grades because of Head Start's compilation of a full dossier on each child.

8. An increasing number of schools are incorporating the basic premise of Head Start for parental involvement and participation by bringing the total family unit into the learning process.

9. Head Start has demonstrated that children of preschool and kindergarten age can learn more, faster, and at an earlier age than previously thought. The result is an increasing demand for new and better teaching techniques, longer kindergarten class days, more individual attention to pupils, and special services.

For further information, write to:

Project Head Start
Office of Child Development
U. S. Department of Health, Education, and Welfare
P. O. Box 1182
Washington, D. C. 20013

APPENDIX E

U. S. DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE
Office of Human Development
Office of Child Development
Washington, D. C. 20201

PROJECT HEAD START STATISTICAL FACT SHEET
FISCAL YEAR 1974

HEAD START BUDGET - $403.9 million

Head Start Full-Year Programs)	
Head Start Summer Programs)	$357.7 million
Parent and Child Centers	6.3 million
Evaluation	3.0 million
Career Development and Technical Assistance	19.1 million
Experimental Programs	6.0 million
Program Direction	11.8 million

Head Start Programs

Total number of Programs, including Parent and Child Centers	1974 - 1,355
Total number of Full-Year and Summer children, including children in Home Start, Child and Family Resources Program and Handicapped Programs	1974 - 352,800
Total number of Full-Year and Summer children enrolled since inception of Project Head Start	1974 - 5,667,600

Head Start Full-Year Programs

Total number of Programs	
50 States (including 76 Indian and Migrant programs)	1,122
Puerto Rico	12
Virgin Islands	4
Pacific Islands Trust Territories	6
Total number of children enrolled	288,000
Total number of personnel:	
Professional	21,367
Nonprofessional	35,568
Volunteers	85,000
Average cost per child	1,200.00

Location of sites
Urban - 60 percent
Rural - 40 percent

Head Start Summer Programs (summer session in 1974)

Total number of Programs	200
Total number of children enrolled	46,000
Total number of personnel:	
Professional	3,452
Nonprofessional	5,765
Volunteers	9,500
Average cost per child	245.00
Federal contribution	80 percent
Local contribution	20 percent
Aggregate number of hours per child	120

Experimental Programs

Total number of children enrolled	11,000

Parent and Child Centers

Total number of Programs	33
Total number of children enrolled	4,000
Federal contribution	80 percent
Local contribution	20 percent

PROJECT HEAD START

FISCAL YEAR	CHILDREN ENROLLED (Summer and Full-Year)	FEDERAL HEAD START BUDGET
1965	561,000	$ 96.4 (Summer programs only)
1966	733,000	198.9
1967	681,400	349.2
1968	693,900	316.2
1969	663.600	333.9
1970	477,400	325.7
1971	397,500	360.0
1972	379,000	376.3
1973	379,000	400.7
1974	352,800	403.9
1975 estimate	349,000	414.3 1/

ESSENTIAL PRECEPTS

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ACCOMPLISHMENTS

1. Total number of children served to date 5,667,600

1/ Does not include funds for Program Direction. This is included in the overall salaries and expenses for the office of Human Development.

2. More than 10,000 low-income employees of full-year Head Start program are now enrolled in college-level training for 2 year and 4 year degrees at approximately 400 colleges and universities in 49 states, Puerto Rico and the Virgin Islands.

3. Head Start has inspired the Nation to focus its attention on preschool education, not only for the deprived child but for all children.

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P. O. Box 1182
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Supreme Court, U. S.
FILED
SEP 24 1975
MICHAEL RODAK, JR., CLERK

No. 75-60

In the Supreme Court of the United States

OCTOBER TERM, 1975

WILLIE B. VINCENT AND FLORIDA VINCENT, ET AL.,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

Petitioners contend that the court of appeals erred in holding that a "community action agency," within the meaning of Title II of the Economic Opportunity Act of 1964, 78 Stat. 516, as amended, 42 U.S.C. 2781 *et seq.*,[1] is not a federal agency or in-

[1] A community action agency is a "State or political subdivision of a State * * * or a public or private nonprofit agency or organization which has been designated by a State or * * * political subdivision * * * which * * * is determined to be capable of planning, conducting, administering and evaluating a community action program * * *." 42 U.S.C. 2790(a)(2).

strumentality within the meaning of the Federal Tort Claims Act, 28 U.S.C. 1346(b) and 2671 *et seq.*

Christopher Smith and Sharon Vincent, preschool children, participated in an outing sponsored by Arkansas Mid-Delta Office of Economic Opportunity, Inc. (Mid-Delta), a private non-profit corporation designated as a community action agency by Phillips and Monroe Counties, Arkansas. They sustained bodily injuries when the automobile in which they were riding, which was driven by an employee of Mid-Delta, was involved in an accident. Petitioners, their parents, instituted this action pursuant to the Federal Tort Claims Act, alleging that the accident was caused by the negligence of the employee and seeking damages for the personal injuries received in the accident (Pet. App. A, pp. 8-10; Pet. App. B, pp. 12-20).

The United States moved to dismiss on the ground that community action agencies such as Mid-Delta are not federal agencies or instrumentalities and consequently that the United States is not liable for the negligent acts of their employees. The district court granted the motion (Pet. App. B, pp. 20-22); the court of appeals affirmed (Pet. App. A, pp. 10-11).

The decision of the court of appeals is correct. We agree with petitioners, however, that there is a conflict among the circuits on this issue that should be resolved by this Court. In *Orleans* v. *United States*, 509 F.2d 197, the Sixth Circuit, held, directly contrary to the decision below, that a community action

agency is a federal agency for purposes of the Federal Tort Claims Act and that therefore the United States may be held liable under that Act for tortious acts of community action agency employees. The United States has filed a petition for a writ of certiorari in *Orleans* (No. 75-328).[2] Accordingly, we do not oppose the granting of the petition for a writ of certiorari in this case.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

SEPTEMBER 1975.

[2] We are furnishing petitioners with a copy of our petition in *Orleans*.

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